IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Crl. Misc. Application No. 411 of 2005

Vinod Singh Negi

Vs.

State & Another

Date of decision:- 14-07-2005

A.F.R. (Approved for Reporting)

Not approved for reporting

Date :- 14.7.2005 Initials of Judge

Note :- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. application no. 411 of 2005

Vinod Singh Negi S/o Sri Jeet Pal Singh Negi R/o village Rattanpur P.O.Naya Gaon Poleu, P.S. Patel Nagar, district Dehradun.

.....Applicant

VERSUS

1. State of Uttaranchal
2. Rajeev Kumar Sharma S/o Sri Yashpal Sharma, R/o 23 Shiv lok Colony Raipur Road, P.S., Ranipur, Dehradun..... Respondents

Hon'ble J. C. S. Rawat, J.

1. Heard Sri Vinod Sharma learned counsel for the applicant and learned A.G.A. and perused the record.

2. The present application has been filed under section 482 Cr.P.C. for quashing the criminal proceeding in case no.1804/2004 State Vs. Vinod Singh Negi pending before the Chief Judicial Magistrate, Dehradun.

3. Brief facts are that a complaint was filed under section 138 of The Negotiable Instrument Act before the Chief Judicial Magistrate, Dehradun. The complaint filed the affidavits in support of his case under sections 200 and 202 Cr.P.C. and thereafter the cognizance was taken by the learned Magistrate vide order-dated 3.9.2003. Feeling aggrieved by the said order the present application has been filed under section 482 Cr.P.C.

4. The only point raised before me is as to whether the complainant was entitled to file the affidavits in

support of his evidence under sections 200 and 202 Cr.P.C. or not. The learned counsel for the applicant contended that under sections 200 and 202 Cr.P.C. the statements on oath have to be recorded by the learned Magistrate. The learned counsel for the applicant further contended that in the present case the complainant was neither examined u/s 200 Cr.P.C. on oath nor his witnesses under section 202 Cr.P.C. and only the affidavits were accepted whereupon the cognizance was taken. The learned AGA refuted the contention and contended that there is specific provision under the Negotiable Instrument At is which the complainant may adduce his evidence through affidavits in any enquiry or trial. Section 145 of the Negotiable Instrument Act reads as under:-

" **Evidence on affidavit**.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1074), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein."

5. Perusal of the above section clearly permits the Magistrate to take the evidence on affidavit. If the Magistrate takes the cognizance and proceeds under section 200 and 202 Cr.P.C. it is an inquiry under the provisions of Cr.P.C. and the complainant is entitled to file the affidavits in support of his evidence. No other point was raised.

4. In view of the above discussion I am of the view that the petition devoids of merit and is liable to be dismissed.

5. The petition is dismissed.

(J. C. S. Rawat, J.)

Dated 14.7.2005

MPS